***THE HON'BLE SRI JUSTICE A.GOPAL REDDY**

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+ WRIT PETITION No. 3678 of 2004

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%Dated 25-11-2004

Sri Vishnu Merchants, situated at Jupiter Colony, Plot No.16, A.O.C.Centre, Kakaguda, Secunderabad-500 015, rep. by
Sri Rajnish Agarwal, S/o Sri Vijay Kumar Agarwal,
R/o Jupiter Colony, Plot No.16, A.O.C.Centre, Kakaguda, Secunderabad-500 015.

..... PETITIONER

VERSUS

$1 The Mandal Revenue Officer, Tirumalgiri Mandal,
Ranga Reddy District.
2 The Collector, Ranga Reddy District.
3 The State of Andhra Pradesh, through the Secretary,
Revenue Department, Secretariat, Hyderabad.
4 The Deputy Director General of Foreign Trade, Enforcement-cum-Adjudication, 1st Floor, Kendriya Sadan, Sultan Bazar,
Hyderabad-500 095.

.....RESPONDENTS

! Counsel for Petitioner No.1: Mr.MILIND G.GOKHALE, ADVOCATE

^Counsel for Respondents 1 to 3: G.P. FOR REVENUE

^Counsel for Respondent No.4 : Mr.T.SURYAKARAN REDDY, SC FOR CG

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? Cases referred

1. AIR 1956 SC 20
2. AIR 1978 AP 420
3. AIR 1976 PATNA 355
4. 1993 Supp(3) SCC 562

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION No. 3678 of 2004

Between:

Sri Vishnu Merchants, situated at Jupiter Colony, Plot No.16, A.O.C.Centre,
Kakaguda, Secunderabad-500 015, rep. by
Sri Rajnish Agarwal, S/o Sri Vijay Kumar Agarwal,
R/o Jupiter Colony, Plot No.16, A.O.C.Centre, Kakaguda, Secunderabad-500 015.

..... PETITIONER

AND

1 The Mandal Revenue Officer, Tirumalgiri Mandal,
Ranga Reddy District.
2 The Collector, Ranga Reddy District.
3 The State of Andhra Pradesh, through the Secretary,
Revenue Department, Secretariat, Hyderabad.
4 The Deputy Director General of Foreign Trade, Enforcement-

cum-Adjudication, 1st Floor, Kendriya Sadan, Sultan Bazar,
Hyderabad-500 095.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue appropriate writ, order or direction more particularly one in the nature of a writ of certiorari calling for the records pertaining to the Notice issued by the first respondent bearing No.B/3741/02, dt. 17-02-2004 and all connected records thereto and upon perusal of the same be pleased to quash and set aside the impugned Notice bearing No.B/3741/02, dt.17-02-2004 in the interest of justice.

Counsel for Petitioner No.1: Mr.MILIND G.GOKHALE, ADVOCATE

Counsel for Respondents 1 to 3: G.P. FOR REVENUE

Counsel for Respondent No.4 : Mr.T.SURYAKARAN REDDY, SC FOR CG

THE HON'BLE SRI JUSTICE A. GOPAL REDDY

WRIT PETITION NO.3678 OF 2004

ORDER:

In this case, the petitioner seeks issuance of a rule calling upon the respondents to show cause why a Writ in the nature of Certiorari could not be issued under Article 226 of the Constitution of India to call for the records relating to impugned notice dated 17.2.2004 issued by the first respondent-Mandal Revenue Officer, Tirumalagiri Mandal and to quash the same.

The facts in nutshell are as under:

The petitioner who stated to be doing export business exported bulk drugs to Dubai under Duty Entitlement Passbook (DEPB) Scheme. The petitioner while exporting certain quantity of bulk drugs namely "Naproxen", which were lying in Bombay Nhava Sheva Docks, they were seized and petitioner was arrested and detained by the Director of Revenue Intelligence under Conservation of foreign Exchange and Prevention of Smuggling Activities Act. A show cause notice dated 12.9.2001 was issued to the petitioner under Section 14 of the Foreign Trade (Development & Regulation) Act, 1992 alleging that the petitioner exported chalk powder under

DEPB scheme by grossly mis-declaring the same as “Naproxen and Rifampicin BP” (bulk drugs) against the licence and the goods have been over invoiced to fraudulently claim the benefit under DEPB scheme by calling upon the petitioner to show cause why action should not be taken to impose fiscal penalty under Section 11(2) of the Foreign Trade Act, 1992 and why licence should not be cancelled. Not satisfying with the explanation offered by the petitioner, final show cause notice dated 25.1.2002 was issued to the petitioner by the Joint Director General of Foreign Trade calling upon him to explain why fiscal penalty should not be imposed. As the petitioner did not submit his explanation to the said show cause notice, the Joint Director General of Foreign Trade, Hyderabad passed final orders dated 19.3.2002 imposing fiscal penalty of Rs.1,30,60,725/- on the petitioner under Section 11(2) of the Foreign Trade Act, 1992. For due recovery of the same, necessary authorization was made duly authorizing the District Collector-Respondent No.2 herein to recover the said amount of Rs.1,30,60,725/- from the petitioner. Pursuant to which, the Mandal Revenue Officer passed the impugned order dated 17.2.2004 directing the petitioner to pay a sum of Rs.1,30,60,725/- within (7) days from the date of receipt of the notice. The legality and validity of the said impugned order is assailed in the present writ petition.

It is stated that the petitioner’s licence was also cancelled by order, dated 13.5.2002. Aggrieved by the same, petitioner preferred W.P.No.12878 of 2002 and the same was directed to post along with batch of writ petitions, which were tagged along with W.A.No.1953 of 2001, are pending consideration of this Court and no interim orders were passed in the above batch of cases.

Respondents 1 and 4 have filed separate counter affidavits. The first respondent in his counter affidavit submits that on a requisition received from the fourth respondent for recovery of dues from the petitioner under Foreign Trade Act as contemplated under Section 5 of the Revenue Recovery Act, 1890 (Central Act), second respondent sent a requisition and directed him to recover the said amount from the petitioner and pursuant to such instructions, he issued impugned demand notice under Section 25 of the A.P. Revenue Recovery Act, 1864 calling upon the petitioner to pay a sum of Rs.1,30,60,725/-.

The fourth respondent in his counter affidavit stated that the penalty imposed under the Foreign Trade Act if not paid, the same may be recovered as an arrear of land

revenue and under Section 5 of the Central Act, when any sum is recoverable as an arrear of land revenue by any public officer other than a Collector, on request of such Officer, the Collector may proceed to recover the same as an arrear of land revenue which accrued in his own district. Thus, the District Collector, on requisition, is empowered to recover the said amount payable to fourth respondent by duly following the procedure prescribed under the State Act. He also submits that against the final orders passed by the fourth respondent dated 19.3.2002, petitioner preferred W.P.No.12879 of 2002 and batch, but no interim orders were granted in the said cases and in the absence of any interim orders, there is no bar for the fourth respondent to recover the said amount.

The learned counsel for the petitioner submits that questioning the show cause notices and the suspension of the licence, he filed writ petitions before this Court and while the same are pending adjudication, the issuance of impugned notice is bad and violative of Articles 14, 19 and 21 of the Constitution of India. It was contended that unless necessary notification as contemplated under Section 52-A of the State Act is issued, the same cannot be recovered as an arrear of land revenue under the said Act. In the absence of specific procedure laid down for recovery of the amount as an arrear of land revenue under Revenue Recovery Act, 1890 (Central Act) second respondent cannot recover the same.

Per contra, the learned Advocate General appearing for Respondents 1 to 3 would urge that on requisition received from the Collector as contemplated under Section 5 of the Central Act, the Mandal Revenue Officer was authorized to recover the said amount since the petitioner resides within the jurisdiction of fourth respondent. Under Section 11(4) of the Foreign Trade Act, the District Collector or his Officer is empowered to recover the penalty as an arrear of land revenue. In support of his contention, he placed reliance on the judgment of the Apex Court in **PURSHOTTAM GOVINDJI HALAI V. SHREE B.M.DESAI, ADDITIONAL COLLECTOR OF BOMBAY**, and contends that any recovery of the certified demand amount, the Collector can have recourse to the machinery devised for a particular purpose for enforcing the payment of land revenue under A.P. Revenue Recovery Act, 1864 (State Act).

Sri Rajasekhar Reddy, learned Standing Counsel for Central Government would contend that Section 5 of the Revenue Recovery Act, 1890 authorizes the District Collector for recovery of sums recoverable as arrears of revenue by other public

officers or by local authorities and Section 7 saves the local laws relating to revenue and the same can be recovered under Section 52 of the Act. He also placed reliance on the judgment of this Court in **SOMASUDARSHAN GOUD V. THE DISTRICT COLLECTOR**, and contends that Sections 3 and 5 of the Central Act authorizes the Collector not only in respect of sums recoverable as land revenue and payable to the Collector but also in respect of sums recoverable as land revenue by public officers other than the Collector or by local authority and therefore he contends that the requisition to recover the amount imposed as penalty is justified.

Before I proceed to consider the rival contentions, it is appropriate to notice the relevant statutory provisions under which the amounts sought to be recovered.

Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 reads as under:

11. Contravention of Provisions of this Act, Rules, orders and export and import policy.

1. No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

2. Where any person makes or abets for attempts to make any export or import in contravention of any provisions of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to be a penalty not exceeding one thousand rupees of five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

3. Where any person, or a notice to him by the Adjudicating authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and in such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person

4. A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue and the Importer-exporter Code Number of the person concerned may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.

Section 5 of the Revenue Recovery Act, 1890, reads as follows:

5. Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities:

> Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.

In PURSHOTTAM GOVINDJI HALAI's case (1 supra), the Supreme Court has considered this issue with regard to recovery of income tax on assessment being finalized and certificate issued under Section 46(2) of the Income Tax Act and forwarding the same to the Collector, who issued notice of demand of the assessee for payment of assessed amount of tax and on failure to pay, the Collector attached the goodwill and tenancy rights in the premises in which a sale proclamation was issued and the sale proceeds not being sufficient to satisfy the assessed tax, a notice was issued under Section 13 of the Bombay City Land Revenue Act, 1876 requiring the assessee to appear before the Collector in person and show cause why the assessee should not be apprehended and confined to civil jail in satisfaction of the said certified demand. When the assessee failed to appear, he was arrested and detained in Jail in execution of the warrant of arrest. The arrest of which was challenged by the assessee before the Bombay High Court under Article 226 of the Constitution of India by way of Habeas Corpus petition, in which a rule was issued by the High Court initially and the same was discharged. Without filing appeal, the same was challenged under Article 32 of the Constitution of India before the Supreme Court. After considering the Section 46(2) of the Income Tax Act and adopting of procedure by the Collector laid down by the State laws, the Supreme Court held that on issuance of certificate from the Income Tax Officer under Section 46(2), the Collector has to proceed with recovery certificate as it were arrears of land revenue, which means the Collector of a particular place has to take steps as indicated in the State law, relating to recovery of arrears of land revenue.

In SOMASUDARSHAN GOUD's case (2 supra), this Court while dealing with the certificate issued by the Collector under Section 3 of the Revenue Recovery Act (Central Act), observed that the Collector may issue a certificate under Section 3 not only in respect of sums recoverable as land revenue and payable to the Collector, but also in respect of sums recoverable as land revenue by public officers other than the Collector or by local authority. In this case, the Collector, Bombay requested the

Collector, Hyderabad to collect the amount as arrears of land revenue from the petitioner therein and pursuant to which, the Collector, Hyderabad initiated proceedings under the Revenue Recovery Act for collection of the amount. Whether the Collector, Hyderabad can collect the said amount under A.P. Revenue Recovery Act was the subject matter of that case and this Court while dealing with the correctness of the certificate issued by the Collector, Bombay, held that the Collector of Bombay is entitled to recover sums recoverable as arrears of land revenue by the excise officials and issue the certificate under Section 3 which can be recovered as arrears of land revenue.

In **M/S MAHALAXMI FIBRES AND INDUSTRIES LTD. V. STATE OF BIHAR,** the Patna High Court while dealing with the validity of the certificate issued under Section 73-A of the Employees State Insurance Act for recovery of amounts due under the provisions of the Revenue Recovery Act (Central) held that where the sum is not payable to a Collector but is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority and once such public officer or local authority makes a request to the Collector of the district in which the office of that officer or authority is situate, the Collector shall proceed to recover the sum as if it were an arrear of land revenue which had accrued in his own district.

In **SIROMAN SINGH V. STATE OF ORISSA**, the Supreme Court while considering the Amendment of Section 93 of Bihar and Orissa Excise Act, 1915, held that excise dues can be recovered as arrears of land revenue.

In the light of the above statutory provisions and the law declared by various Courts including the Apex Court, I now proceed to consider the submissions made by the learned counsel for petitioner.

It is not in dispute that for breach of conditions of licence, the Joint Director General of Foreign Trade under Section 13 of the Foreign Trade (Development and Regulation) Act, 1992, has imposed fiscal penalty of Rs.1,30,60,725/- on the petitioner. The Petitioner did not choose to prefer an appeal questioning the correctness or otherwise of the said order. The Joint Director also authorized the Collector to recover the said amount and in pursuance thereof, the Collector directed the Mandal Revenue Officer to recover the said sum under the provisions of A.P. Revenue Recovery Act.

Prima facie, under Section 11(4) of the Foreign Trade Act, a penalty imposed under

the Act, if it is not paid, can be recovered as an arrear of land revenue. Under Section 5 of the Revenue Recovery Act (Central), where any sum is recoverable as an arrear of land revenue by any public officer other than the Collector or by local authority on the request of officer or authority, the Collector can proceed to recover the sum as if it were an arrear of land revenue, which had accrued in his district, following the procedure under the A.P. Revenue Recovery Act. Once such requisition is made, it is lawful for the Collector, or the other officer empowered by him in that behalf, to proceed to recover the arrears, together with interest and costs of process, by sale of the defaulter's movable and immovable property, or by execution against the person of the defaulter in manner provided as per Section 5 of the A.P. Revenue Recovery Act.

It is fallacy to contend by the learned counsel for the petitioner that since the sum is not a land revenue, which cannot be recovered as an arrear of land revenue when the sum is not payable to a Collector.

Having regard to the law enunciated above and for the reasons aforementioned, the impugned demand notice dated 17.2.2004 do not suffer from any infirmities and is in tune with the procedure contemplated for recovery of the amounts due from the petitioner. The submission made by the learned counsel for the petitioner does not commend acceptance by this Court.

The writ petition is bereft of any merit and is accordingly dismissed. No costs.

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A. GOPAL REDDY, J

Date: 25.11.2004

DA/Tsr.

To

1 The Mandal Revenue Officer, Tirumalgiri Mandal,
Ranga Reddy District.
2 The Collector, Ranga Reddy District.
3 The Secretary, Revenue Department, State of A.P.,

Secretariat, Hyderabad.
4 The Deputy Director General of Foreign Trade, Enforcement-cum-Adjudication, 1st Floor, Kendriya Sadan, Sultan Bazar, Hyderabad-500 095.

5 Two CCs to the G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

6 Two CD copies.